



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2012-0343]

RIN 1625-AA11

Regulated Navigation Area -- New Haven Harbor, Quinnipiac River,  
Mill River, New Haven, CT; Pearl Harbor Memorial Bridge

(Interstate 95) Construction

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

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SUMMARY: The Coast Guard is changing the existing regulated navigation area in the navigable waters of New Haven Harbor, Quinnipiac River and Mill River. The current RNA pertains only to the operation of tugs and barges. The changes allow periodic, temporary closure of the area which will be needed during construction of the new Pearl Harbor Memorial Bridge, and which could be needed at other times as well. This revision allows the Coast Guard to suspend all vessel traffic through the RNA during periods of temporary closure. This rule is necessary to provide for the safety of life in the regulated area.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2012-0343]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Petty Officer Joseph Graun, Prevention Department, U. S. Coast Guard Sector Long Island Sound, (203) 468-4544, [Joseph.L.Graun@uscg.mil](mailto:Joseph.L.Graun@uscg.mil); or Lieutenant Isaac M. Slavitt, Waterways Management Division, U.S. Coast Guard First District, (617) 223-8385, [Isaac.M.Slavitt@uscg.mil](mailto:Isaac.M.Slavitt@uscg.mil). If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Table of Acronyms

COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register

#### A. Regulatory History and Information

On August 8, 2012 we published a notice of proposed rulemaking (NPRM) entitled Regulated Navigation Area -- New Haven Harbor, Quinnipiac River, Mill River, New Haven, CT; Pearl Harbor Memorial Bridge (Interstate 95) Construction, in the Federal Register (77 FR 47331).

One comment was received and no requests for a public meeting were received.

#### B. Basis and Purpose

Under the Ports and Waterways Safety Act, the Coast Guard has the authority to establish RNAs in defined water areas that are hazardous or in which hazardous conditions are determined to exist. See 33 U.S.C. 1231 and Department of Homeland Security Delegation No. 0170.1.

The purpose of this rulemaking is to provide for safety on the navigable waters in the regulated area, and to update some of the terminology used in describing the boundaries of the RNA. This rule gives the Captain of the Port Sector Long Island Sound (COTP) the authority to temporarily close the RNA to vessel traffic in any circumstance, whether currently planned or unforeseen, that the COTP determines creates an imminent hazard

to waterway users in the RNA. Temporary closures are currently foreseeable in connection with the reconstruction of the Pearl Harbor Memorial Bridge (sometimes referred to as the I-95 Bridge, Quinnipiac Bridge, or "Q" Bridge), which has begun and is scheduled for completion in 2015. Terminology updates reflect the current names of local landmarks to make them more easily identifiable for mariners, but do not change the location or dimensions of the RNA.

#### C. Discussion of Comments, Changes and the Final Rule

We received one comment from the National Oceanic and Atmospheric Administration. Their comment stated the Latitude and Longitudes are written in North American datum (NAD) 1927 format. They requested we reference the format in the text or convert the coordinates to NAD 1983 format. In response to the comment we converted the coordinates to NAD 1983 format and referenced the format. The converted coordinates and format reference can be found in the regulatory text. Otherwise, the final rule is unchanged from what we proposed in the NPRM.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

##### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under

section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The Coast Guard determined that this rulemaking will not be a significant regulatory action for the following reasons: vessel traffic will only be restricted from the RNA for limited durations and the RNA covers only a small portion of the navigable waterways. Furthermore, entry into this RNA during a closure may be authorized by the COTP Sector Long Island Sound or designated representative.

Advanced public notifications will be made to local mariners through appropriate means, which may include but are not limited to the Local Notice to Mariners and Broadcast Notice to Mariners.

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and

governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit, anchor or moor within the regulated areas during a vessel restriction period.

The RNA will not have a significant economic impact on a substantial number of small entities for the following reasons: the RNA will be of limited size and any waterway closures will be of short duration, and entry into this RNA during a closure is possible if the vessel has Coast Guard authorization. Additionally, before the effective period of a waterway closure, notifications will be made to local mariners through appropriate means which may include but are not limited to the Local Notice to Mariners and Broadcast Notice to Mariners.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or

options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section of this preamble.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This rule does not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

## 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

## 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

## 8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

## 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to

minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### 11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### 12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

#### 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 14. Environment

We have analyzed this rule under Department of Homeland

Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves restricting vessel movement within a regulated navigation area. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and

160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. In §165.150 revise paragraphs (a) and (b)(8), and add new paragraph (b)(9) to read as follows:

§ 165.150 New Haven Harbor, Quinnipiac River, Mill River.

(a) Boundaries. The following is a regulated navigation area: The waters surrounding the Tomlinson Bridge and Pearl Harbor Memorial Bridge (I-95 Bridge) located within a line extending from a point A at 41°17'50.35" N, 072°54'34.37" W (the southeast corner of the Magellan Pink Tanks Terminal dock) thence along a line 126°T to point B at 41°17'42.35" N, 072°54'19.37" W (the southwest corner of the Gulf facility) thence north along the shoreline to point C at 41°17'57.35" N, 072°54'04.37" W (the northwest corner of the R & H Terminal dock) thence along a line 303°T to point D at 41°18'05.35" N, 072°54'21.37" W (the west bank of the mouth of the Mill River) thence south along the shoreline to point of origin. All coordinates are North American Datum 1983.

(b) \* \* \*

(8) The Captain of the Port Sector Long Island Sound (COTP) may issue an authorization to deviate from any regulation in paragraph (b) of this section if the COTP determines that an alternate operation can be done safely.

(9) The COTP may temporarily close the RNA for any situation the COTP determines would create an imminent hazard to waterway users in the RNA. Entry into the RNA during temporary closure is prohibited unless authorized by the COTP or the COTP's designated representative. The COTP or designated representative may order the removal of any vessel or equipment within the RNA. To assure wide advance notice of each closure among affected mariners, the COTP may use means including, but not limited to, Broadcast Notice to Mariners and Local Notice to Mariners. The COTP will announce the dates and times of the closure and whether exceptions will be authorized for emergency or other specific vessel traffic.

Dated: October 24, 2012

J. B. McPherson  
Captain, U.S. Coast Guard  
Acting Commander, First Coast Guard District

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